BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

In the matter of:	)	
	)	
TENNESSEE DEPARTMENT	)	
OF SAFETY,	)	**DOCKET NO. 19.01-063846J**
	)	
	)	**Department of Safety No. D2477**
	)	
v.	)	
	)	
$31,220 in U.S. CURRENCY	)	
SEIZED FROM: MINKI KIM	)	
SEIZURE DATE: 5/26/2004	)	
CLAIMANT: MINKI KIM	)	

INITIAL ORDER

This matter came on to be heard on May 31, 2005, in Chattanooga, Tennessee before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. William R. Lundy, Jr., Attorney for the Department of Safety, appeared on behalf of the State or Department of Safety. Claimant, Minki Kim, was present and was represented by Mr. Stephen Duggins of the Chattanooga Bar.[1]

The subject of this hearing was the proposed forfeiture of $31,220 in U.S. currency for its alleged use in violation of the Tennessee Drug Control Act, §39-17-401, *et seq.,* and T.C.A. §53-11-451.

Prior to the hearing beginning, the undersigned entertained two motions:

[1] Claimant is Korean. A Korean interpreter, Mr. Lee, was present at the hearing. After being sworn in as an interpreter of the proceedings, Mr. Lee served as Claimant's interpreter throughout the hearing.

(1) the State's motion to dismiss Claimant Kim's claim due to lack of standing; and

(2) Claimant's motion to suppress.

The State's Motion to Dismiss Claimant's Claim Due to Lack of Standing

Prior to the hearing on the merits beginning, the State moved to dismiss Claimant's claim on the basis of standing, pursuant to T.C.A. §53-11-201.

Findings of Fact Relevant to State's Motion to Dismiss Claimant's Claim Due to Lack of Standing

On direct examination by the State's attorney, Claimant testified to the following:

1. On May 26, 2004, Claimant was driving a vehicle when he was pulled over and stopped by the police in Cleveland, Tennessee. He was driving a black Lincoln Town Car, and was accompanied by Mr. Chin.

2. Claimant was driving to New York from Atlanta at the time his vehicle was stopped.

3. Claimant went to Atlanta to get loan repayment money from a Ms. Yang.

4. Around $30,000 in currency was in the trunk of the automobile which Mr. Kim (Claimant) was driving.

5. Claimant testified that this money was money repaid to him by Ms. Yang. He knew the money was around $30.000, but did not count the money.

6. Claimant further testified that he did not have a written contract with Ms. Yang regarding the loan of the money.

7. Claimant testified that his wife made the loan arrangements with Ms. Yang, a family friend.

8. The money which was found in vehicle's trunk was approximately $30,000, and was in three separate envelopes. Ms. Yang gave Claimant the money in three envelopes.

9. Claimant testified that he knew Ms. Yang's last name, however, he did not know Ms. Yang's full name.

10. Claimant testified that in his culture (Korean), women are usually referred to by their last name, hence, he would not necessarily have known Ms. Yang's first name.

11. Claimant has lived in the United States for twenty years. During that time, his business relationships have been primarily in the Korean community in the United States.

12. When the parties involved are close, business transactions are not written out. In the Korean community, loans are typically cash transactions.

13. Claimant also testified that the money which he picked up from Ms. Yang was his money.

Conclusions of Law Applicable to State's Motion to Dismiss Claimant's Claim Due to Lack of Standing

1. T.C.A. §53-11-201(f)(1)(A) states as follows:

> Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by an owner or other person asserting the

> interest of the owner, the commissioner shall not allow the claim unless and until the claimant proves that the claimant:
>
> (A) Has an interest in such property which the claimant acquired in good faith;

2. The doctrine of "standing" is a judge-made doctrine used to determine whether a party asserting the claim has a sufficiently personal stake in the outcome of the action to warrant judicial resolution of the dispute or relief. Suntrust Bank v. Johnson, 46 S.W. 3d 216, 222 (Tenn. Ct. App. 2001).

3. T.C.A. §53-11-201(f)(1)(A) codifies the "standing" requirement to require that the claimant prove he or she has an interest in the property at issue, with the interest being acquired in good faith. The Claimant has the burden of proof as to "standing", as to any motions or other pleadings advanced by the Claimant, and as to any matter set forth in the [Drug Control] Act whereby the burden of proof is placed on the Claimant. 1340-2-2-.15(3), *Rules of Procedure for Asset Forfeiture Hearings, Rules and Regulations of the Department of Safety.*

4. In order for the Claimant to prevail on the issue of "standing" as set forth in T.C.A. §53-11-201(f)(1)(A, the Claimant must show that he is a credible witness and his claim of ownership is believable. Gordon v. Greene, 1996 WL 346674, p. 2 (Tenn. Ct. App. 1996). The Claimant's burden of proof at a hearing on "standing" includes proving the requisites of T.C.A. §53-11-201(f)(1)(excluding T.C.A. §53-11-201(f)(1)(B)).

5. The State argued that the money was more likely Mrs. Kim's than Claimant's money.

6. The State further argued that it did not make sense that Mr. Kim did not count his loan re-payment money, and urged the undersigned to conclude that the money was not Claimant's.

7. Claimant Kim's testimony was deemed credible within the context of his testimony regarding Korean business dealings. Within that context, Claimant Kim's claim of ownership was deemed believable. There was no evidence presented by the State which rebutted Claimant's assertion regarding usual and customary business dealings in the American-Korean community. Nor was there any evidence, other than speculation, which rebutted Claimant's testimony that the money was his money that he had acquired as re-payment for a loan he had made.

8. Claimant Kim met his burden of proof with regard to his standing to assert this claim. The State's motion to dismiss on the basis of lack of standing is respectfully **DENIED.**

Claimant's Motion to Suppress and
Exclude all Evidence Obtained through the Stop of the Vehicle

Findings of Fact Related to Motion to Suppress

Claimant timely filed a motion to suppress and exclude all evidence obtained through the stop of his vehicle by the Cleveland, Tennessee's Sheriff's Department. The State filed a response in opposition to the motion to suppress. The relevant facts are as follows:

1. Claimant was traveling from Atlanta, Georgia through the Cleveland, Tennessee area on Interstate 75. He was driving a black Lincoln Continental

Town Car, which Claimant referred to as a "taxi". Claimant was accompanied by Mr. Chin. Claimant testified that the vehicle he was driving belonged to Mr. Chin. No evidence was presented which contradicted Claimant's testimony regarding the ownership of the vehicle.

2. Excerpts of Officer Douglas Towne's deposition testimony were attached as an exhibit to both the Claimant's Motion and the State's Response to the Motion to Suppress. Officer Towne also testified at the hearing of this matter.

3. Officer Towne is an officer with the Cleveland Sheriff's Department, and is assigned as a "School Resource Officer" at a local elementary school in Cleveland, Tennessee.

4. On May 26, 2004, Officer Towne was working his "summer assignment" with the Drug Enforcement Unit on Interstate 75, at approximately mile marker 29. Officer Towne was working "interdiction" for drug couriers or cash couriers using Interstate 75.

5. Officer Towne received a cell (Nextel) call from another member of his department, Sergeant Rogers, who told Officer Towne to be on the "lookout for a newer model Lincoln Town Car". Sergeant Rogers informed Officer Towne that the Lincoln Town Car had been seen in a "known drug area, so [Officer Towne should] just keep an eye out for it".[2]

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[2] Officer Towne explained that the "known drug area", referenced by Sergeant Rogers during his cell call, was the area of Norman Chapel Road and Westside Drive in Cleveland, Tennessee. Officer Towne had been told that a search warrant had been "recently" served over in that area. Officer Towne did not know specifically where the search warrant had been served, because he was not involved with the search warrant. The search warrant had been executed some time earlier before Officer Towne began his summer assignment with the Drug Enforcement Force.

6. Prior to Sergeant Rogers' call, Officer Towne had been observing northbound vehicles, and had been checking the vehicles' speeds with radar equipment.

7. Shortly thereafter, Officer Towne observed the Lincoln Town Car driven by Claimant entering the Interstate at Exit 25.

8. According to Officer Towne, Sergeant Rogers told him during the Nextel call that when he (Sergeant Rogers) had seen Claimant's vehicle at the intersection of Westside Drive and Norman Chapel Road, "the driver and the passenger appeared extremely nervous, that they wouldn't look at him, make eye contact with him or anything like that."

9. Officer Towne further testified that he sat at the Interstate "watching for the [Claimant's] car to come by and did see the car come by a short time after[.]"

10. Officer Towne pulled his vehicle out onto the Interstate and pulled up along side Claimant's vehicle.

11. Claimant's vehicle was in the right lane, northbound on Interstate 75. Claimant was not speeding.

12. Officer Towne testified that he pulled Claimant over because Claimant's vehicle touched the solid white line on right side of the lane. Claimant did not veer off into the emergency lane. Officer Towne does not remember how many times Claimant's tire touched the solid white line. Officer Towne testified that "when drivers cross those lines, the white line for example, that could be an indication that they're too tired to be driving. They could also be too intoxicated

to be driving." After Officer Towne talked with Claimant, Officer Towne decided that there was no need to conduct field sobriety tests on Claimant.

13. Officer Towne further testified that he stopped Claimant because of a "failure to maintain lane", T.C.A. § 55-8-109. However, Officer Towne noted that he didn't "think we ever did get to why exactly we had pulled them [the Claimant and his passenger] over." Later in his testimony, Officer Towne reviewed the "warning" given to Claimant, and testified that, according to the "warning", he had stopped the Claimant for T.C.A. §55-8-101, Violation of Traffic Control Devices.

14. Officer Towne noted that both Claimant and his passenger spoke "broken English", and there was a possibility that there was a language barrier.

15. Officer Towne gave Claimant a "warning" for violation of a traffic control device, but did not cite him.

16. Officer Towne testified that he asked Claimant's consent to search the vehicle, after asking Claimant if he had any illegal drugs or cash. According to Officer Towne, Claimant replied that he did not have illegal drugs or cash, and consented to the search of the vehicle.

17. Sergeant Jerry Rogers testified that he "Nextelled" Officer Towne on May 26, 2004 because he had observed Claimant in a neighborhood that had a "lot of drug activity". Sgt. Rogers radioed Officer Towne that "he may want to take

a look at the car and see if he could establish his own probable cause for the stop."[3]

18. Sgt. Rogers believed Claimant was behaving in a suspicious manner because "he [Claimant] never took his eyes off the roadway….and he made a real wide turn into my portion of the road." Further, Sgt. Rogers considered it suspicious because the driver of the vehicle would not make eye contact with him. Sgt. Rogers believed the driver was Hispanic.

19. According to Sgt. Rogers, when an officer runs "interdiction", such as Officer Towne was doing on May 26, 2004, the officer tries to "establish some kind of probable cause to stop a vehicle and then proceed from there to…further investigate to see if there is narcotic or cash in the vehicle."

Conclusions of Law Related to Motion to Suppress and Ruling on Motion

1. The Fourth Amendment of the United States Constitution guarantees that:

> …the right of the people to be secure…against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause.

2. Article I, §7 of the Tennessee Constitution also guarantees:

> …people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures…[.]

[3] Sgt. Rogers testified that he could not actually see whether or not Claimant's vehicle pulled out of the apartment complex which had been the subject of drug activity. He saw Claimant on Westside Drive, the road in front of the apartment complex. Westside Drive runs alongside (parallel to) Interstate 75.

3. The language of both the United States and Tennessee Constitutions mandates that a warrantless search or seizure is presumed unreasonable, and the evidence discovered as a result of such search is subject to suppression unless the search of seizure was undertaken pursuant to one of the narrow exceptions to the warrant requirement. State v. Garcia, 123 S.W.3d 335, 343 (Tenn. 2003).

4. The stop of an automobile and the detention of its driver and occupants constitutes a seizure, even if the purpose of the stop is limited and the detention is brief. State v. Stier, 2000 WL364833, p. 3 (Tenn. Ct. Crim. App. 2000).

5. Tennessee Courts have noted that "[u]pon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop within the meaning of the Fourth Amendment of the Federal Constitution ...and the Tennessee Constitution." State v. Garcia, 123 S.W.3d 335, 344 (Tenn. 2003).

6. A police officer may lawfully stop or "seize" a vehicle if the officer has "reasonable suspicion", based upon specific and articulable facts, that the driver or occupants of the vehicle have been involved in or are about to be involved in criminal activity or traffic violation. State v. Stier, 2000 WL364833, p.3 (Tenn. Ct. Crim. App. 2000).

7. A police officer may also lawfully stop or "seize" a vehicle if the officer has probable cause to believe that a criminal offense or a traffic violation has occurred. *Id.* at 3.

8. The State argues that Officer Towne had "reasonable suspicion" to stop the Claimant in this case.

9. Determining whether or not "reasonable suspicion" exists for a traffic stop requires a factual and objective analysis. State v. Garcia 123 S.W.3d 335, 344 (Tenn. 2003). Only if there is "reasonable suspicion" that the driver had committed, or is about to commit, a criminal offense or traffic violation, can the traffic stop be constitutionally valid. *Id.* at 344.

10. The Court in State v. Garcia, in holding that "reasonable suspicion" did not exist in that particular case, stated:

> [W]e hold that as a matter of law there was no reasonable suspicion to stop Garcia. While the defendant's driving may not have been perfect, …we reiterate that "it is the rare motorist indeed who can travel for several miles without occasionally varying speed unnecessarily, moving laterally from time to time in the motorist's own lane, nearing the center line or shoulder, or exhibiting some small imperfection in his or her driving."

State v. Garcia, 123 S.W.3d 335, 345 (Tenn. 2003), *quoting* State v. Binette, 33 S.W.3d 215, 217 (Tenn. 2000).

11. As a general rule, the stop of an automobile is constitutionally reasonable if the police officer has "probable cause" or "reasonable suspicion" to believe that a traffic violation has occurred. State v. Vineyard, 958 S.W.2d 730, 734 (Tenn. 1998). Further, the constitutional reasonableness of a traffic stop does not depend on the actual motivation of the police officer making the traffic stop. *Id.* at 733. In other words, even if the police officer's subjective reason for making a traffic stop is actually a pretext for the officer's desire to search for and discover illegal drugs; if the officer has personally observed traffic law violations,

"probable cause" or "reasonable suspicion" exists for the officer to make a traffic stop.

12. "Reasonable suspicion" is a less demanding standard than "probable cause". State v. Menzies, 2000 WL 424277, p. 6 (Tenn. Ct. Crim. App. 2000).

13. "Probable cause" is generally defined as a reasonable ground for suspicion, supported by circumstances indicative of an illegal act. State v. Frazier, 2004 WL 1541306, p. 3 (Tenn. Ct. Crim. App. 2004). While "probable cause" is not necessary for an investigative stop, it is required that an officer's "reasonable suspicion" be supported by specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop. *Id.* at 3.

14. It is noted that "reasonable suspicion" can be established with information that is different in quantity and content than information required to establish "probable cause". It is also noted that "reasonable suspicion" can arise from information that is less reliable than that required to show "probable cause." *See* State v. Menzies, 2000 WL 424277, p. 5 (Tenn. Ct. Crim. App. 2000).

12. Sgt. Rogers' radioing or "Nextelling" Officer Towne that he believed Claimant looked suspicious and that Claimant was in a "drug area" of town clearly did not fulfill the reasonable suspicion requirements that the Claimant had committed a crime or was going to commit a criminal offense. Nor did it support "probable cause".

13. Nor does the fact that Claimant's right tire(s) crossed or touched the white line separating the right lane from the shoulder of the road fulfill the

"reasonable suspicion" requirement. When Officer Towne did not even conduct a field sobriety test, it cannot be said that Officer Towne "reasonably suspected" that Claimant was driving while impaired or otherwise committing a criminal offense.

14. There was no "reasonable suspicion" for making the traffic stop based upon a violation of a traffic law when the Claimant was not speeding, when the officer could not say the number of times Claimant's vehicle had touched the white line next to the shoulder of the road or if this occurred more than once, when the officer did not inform Claimant for the reason of the stop, when the reason placed on the "warning" (failure to obey traffic device) was not the same reason given by the officer during testimony (failure to maintain lane), and when Claimant was not issued a citation for a traffic violation.

15. The credibility of the witnesses, the weight and value of the evidence, and the resolution of conflicts in the testimony preponderate in favor of a determination that the traffic stop in this case was not based upon "reasonable suspicion". When the lesser standard of "reasonable suspicion" is not met, clearly "probable cause" does not support the traffic stop in this case.

16. Because there was no "reasonable suspicion" or "probable cause" to make the traffic stop on Claimant, it is determined that the traffic stop made in this case violated the 4th Amendment of the United States Constitution and further violated the Tennessee Constitution.

17. For this reason, Claimant's Motion to Suppress is **GRANTED. All evidence obtained through the stop of Claimant's vehicle by the Cleveland, Tennessee's Sheriff's Department shall be suppressed and excluded.**

The Issue of Consent

At the hearing, the issue of Claimant's "consent" to search was raised by the Claimant. The Claimant argued that due to the language barrier (Claimant is Korean and used an interpreter for the hearing), he did not actually "consent" to the search.

Because the traffic stop on Claimant has been determined to be unconstitutional resulting in all evidence obtained as a result of the stop being excluded, it is not necessary to address whether or not Claimant actually consented to the search of his vehicle. Accordingly, this issue is **MOOT.**

DISMISSAL AND RETURN OF VEHICLE

1. The State has the burden of proving, by a preponderance of the evidence, that the seized currency was subject to forfeiture because it was being used or was intended to be used to violate the Tennessee Drug Control Act, T.C.A. §39-17-402. *See* T.C.A. §40-33-210 and T.C.A. §53-11-201(d)(2). Failure to carry the burden of proof operates as a bar to any forfeiture and the property shall be immediately returned to the Claimant. T.C.A. §40-33-210(b)(1).

2. T.C.A. §53-11-451(a)(6)(A) authorizes the forfeiture of "everything of value furnished, or intended to be furnished in exchange for controlled substance, all proceeds traceable to such an exchange, and all moneys,

negotiable instruments, and securities used, or intended to be used , to facilitate any violation of the Tennessee Drug Control Act."

3. All evidence obtained pursuant to the traffic stop made in this matter has been suppressed and excluded. For this reason, the State cannot meet its burden of proof in this forfeiture proceeding.

4. The State's failure to carry its burden of proof bars forfeiture in this matter. The seized currency shall be immediately returned to the Claimant.

It is so ordered.

This order entered and effective this 21st day of October, 2005.

_____
Joyce Grimes Safley
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 21st day of October, 2005.

_____
Charles Sullivan, II, Director
Administrative Procedures Division

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